

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1503 Health Care  
**SPONSOR(S):** Health Care Regulation Policy Committee; Flores  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2138

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Regulation Policy Committee</u>	<u>12 Y, 0 N, As CS</u>	<u>Holt</u>	<u>Calamas</u>
2)	<u>Health Care Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Health &amp; Family Services Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The bill repeals obsolete or duplicative provisions in licensing laws, to include expired reports and unnecessary documentation requirements regulated by the Agency for Health Care Administration (AHCA).

The bill makes various changes to the regulation of home health agencies. The bill provides a home health agency patient a bill of rights. Home health agency administrators are required to direct the operation of the home health agency and have qualified alternate administrators. The director of nursing must be available during the hours the home health agency is open. The bill specifies the duties of the director of nursing, registered nurse, licensed practical nurse, therapists and therapist’s assistants in providing home health care and supervision. Home health aides must be competent to provide care to patients. Skilled services must be performed in compliance with state practice acts and the patient’s plan of care. The plan of care is to be reviewed and updated according to specified time frames. The home health agency must provide one type of service directly and may provide other services through arrangements with others if they have a written contract.

The bill establishes a new requirement that dentists and dental hygienist complete a dental workforce survey at the time of licensure renewal. Beginning with 2014 licensure renewal cycle, individuals will not be permitted to renew their license if they do not complete the survey. The bill requires the Department of Health to assume responsibilities for collecting, updating, and disseminating dental workforce data and serve as the coordinating and strategic planning body. The bill creates a dental workforce advisory body.

The bill exempts licensed dentists who are part of a professional corporation or Limited Liability Company comprised of dentists from having to obtain a health care clinic establishment permit. The bill provides that the dentist is deemed the purchaser and owner of the prescription drugs.

The bill adds a representative of the Florida Dental Association to the Florida Healthy Kids Corporation board of directors.

This bill does not appear to have a fiscal impact on state or local government revenues or expenditures.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Health Care Licensing Procedures Act**

The Agency for Health Care Administration (AHCA) regulates over 41,000 health care providers under various regulatory programs. Regulated providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act (ss. 112.0455, 440.102, F.S.)
- Birth centers (Ch. 383, F.S.).
- Abortion clinics (Ch. 390, F.S.).
- Crisis stabilization units (Pts. I and IV of Ch. 394, F.S.).
- Short-term residential treatment facilities (Pt. I and IV of Ch. 394, F.S.).
- Residential treatment facilities (Pt. IV of Ch. 394, F.S.).
- Residential treatment centers for children and adolescents (Pt. IV of Ch. 394, F.S.).
- Hospitals (Part I of Ch. 395, F.S.).
- Ambulatory surgical centers (Pt. I of Ch. 395, F.S.).
- Mobile surgical facilities (Pt. I of Ch. 395, F.S.).
- Health care risk managers (Pt. I of Ch. 395, F.S.).
- Nursing homes (Pt. II of Ch. 400, F.S.).
- Assisted living facilities (Pt. I of Ch. 429, F.S.).
- Home health agencies (Pt. III of Ch. 400, F.S.).
- Nurse registries (Pt. III of Ch. 400, F.S.).
- Companion services or homemaker services providers (Pt. III of Ch. 400, F.S.).
- Adult day care centers (Pt. III of Ch. 429, F.S.).
- Hospices (Pt. IV of Ch. 400, F.S.).
- Adult family-care homes (Pt. II of Ch. 429, F.S.).
- Homes for special services (Pt. V of Ch. 400, F.S.).
- Transitional living facilities (Pt. V of Ch. 400, F.S.).
- Prescribed pediatric extended care centers (Pt. VI of Ch. 400, F.S.).
- Home medical equipment providers (Pt. VII of Ch. 400, F.S.).
- Intermediate care facilities for persons with developmental disabilities (Pt. VIII of Ch. 400, F.S.).
- Health care services pools (Pt. IX of Ch. 400, F.S.).
- Health care clinics (Pt. X of Ch. 400, F.S.).

- Clinical laboratories (Pt. I of Ch. 483, F.S.).
- Multiphasic health testing centers (Pt. II of Ch. 483, F.S.).
- Organ, tissue, and eye procurement organizations (Pt. V of Ch. 765, F.S.).

Providers are regulated under individual licensing statutes and the Health Care Licensing Procedures Act (Act) in Part II of Chapter 408, Florida Statutes. The Act provides uniform licensing procedures and standards applicable to most AHCA-regulated entities. The Act contains basic licensing standards for 29 provider types in areas such as licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions, license renewal notices, and bankruptcy and eviction notices.

## **Hospital Licensure**

Currently, Florida law allows AHCA to consider and use hospital accreditation by certain accrediting organizations for various purposes, including accepting accreditation surveys in lieu of AHCA survey, requiring accreditation for designation as certain specialty hospitals, and setting standards for quality improvement programs. Section 395.002, F.S., defines “accrediting organizations” as the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc.

Complaint investigation procedures for hospitals exist in the hospital authorizing chapter as well as in the Act. Section 395.1046, F.S., provides special procedures for hospital complaints regarding emergency access issues. For example, AHCA must: investigate emergency access complaints even if the complaint is withdrawn; prepare an investigative report; and make a probable cause determination. According to AHCA, the federal process for emergency access complaints dictates that these complaints should not be handled any differently from other types of complaints, thereby creating two separate processes for emergency access complaints, one state and one federal.

The bill broadens the definition of “accrediting organizations” for hospitals and ambulatory surgery centers to include any nationally recognized accrediting organization which has standards comparable to AHCA’s licensure standards, as determined by AHCA. This gives AHCA and providers greater flexibility to accept new or improving accrediting organizations, and reconsider existing ones based on current statutory and rule-based standards.

The bill repeals s. 395.1046, F.S., which modifies the procedures for investigations in hospital emergency access complaints. Under the bill, AHCA would use existing hospital complaint investigation procedures used for all other types of complaints.

## **Home Health Agency Licensure**

Currently, services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient’s legal representative. The agreement must specify the services being provided, rates or charges for services paid with private funds, and sources of payment.<sup>1</sup> The bill provides that the home health agency must provide a copy of the agreement to the patient or patient’s representative.

### **Patient Rights**

In addition, the bill creates new provisions requiring a home health agency to protect and promote the rights of each individual under its care. The home health agency is required to provide the patient a written notice of the patients rights prior to the initiation of treatment. The provisions are:

- The patient has the right to exercise their rights as a patient;
- The patient has the right to have their property treated with respect;

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<sup>1</sup> s. 400.487(1), F.S.

- The patient has the right to voice grievances regarding treatment, care, or lack of respect for personal property;
- The patient must be informed of the right to report complaints via the statewide toll-free telephone number;
- The patient has the right to be informed prior to receiving care and any changes in the plan of care; and
- The patient has the right to participate in the planning of care and they must be advised in advance.

The home health agency must investigate any complaint about patient care and failure to respect the patient's property and document both the existence and resolution of the complaint. The patient must be informed of the disciplines (such as registered nurse, home health aide, physical therapist) that will provide the care; notified in advance of the individuals who will provide treatment and care; and the frequency of visits.

## Personnel

The bill amends s. 400.476, F.S., to provide additional requirements and limitations of staffing services for home health agencies.

The bill amends the responsibilities of a home health agency administrator. It requires that an alternate administrator meet the same qualifications as an administrator which includes not working for multiple unrelated home health agencies. It prohibits delegation of supervisory and administrative functions to another agency or organization.

The bill requires the director of nursing or a similarly qualified alternate to be available at all times during operating hours; to oversee the assignment of personnel and nursing services, home health aides and certified nursing assistants; and to participate in all activities related to the provision of professional services by the home health agency.

The bill provides that a home health agency's professional staff must comply with applicable state practice acts, accepted professional standards and principles, and the home health agency's policies and procedures. According to AHCA, by referencing the professional practice acts in state law, AHCA surveyors can cite for non-compliance, and follow up to see if a correction is made.<sup>2</sup>

The bill provides that a home health agency may not use a home health aide unless the individual has successfully completed a training and competency evaluation program to ensure they are adequately trained. All aides must be competent and cannot perform tasks for which they received an unsatisfactory evaluation except under direct supervision of a licensed practical nurse.

The bill amends s. 400.487, F.S., to require home health aides and certified nursing assistants to be supervised by a registered nurse. However, supervision may be provided by therapists if therapy services are only provided. The bill requires that a supervisory visit be made to the home of a patient at least once every 60 days while the home health aide or certified nursing is providing care to a patient. If a patient receiving skilled nursing or therapy services a nurse or therapist is required to visit at least once every two weeks, however, the visit does not have to be made while the aide or certified nursing assistant is providing care. The bill requires that home health aides and certified nursing assistants to receive written patient care instructions from their supervisors.

## Provision of Services

The bill provides in s. 400.476, F.S., that a home health agency must provide at least one of the types of services directly. The services provided by individuals that are not direct employees and by other organizations under arrangements must have a written contract that specifies the services to be

<sup>2</sup> Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Statement of House Bill 1503 (March 24, 2010).

provided, procedures for scheduling visits, submitting notes, evaluating patients, and payment for services.

The bill specifies in s. 400.487, F.S., the services to be provided by a registered nurse, licensed practical nurse, home health aide, certified nursing assistant, therapist and therapist assistant are specified. All personnel serving patients must coordinate their efforts to provide care and show this communication in the patient's record. Verbal orders must be put in writing and plans of care are to be reviewed every 60 days or more frequently if there is a significant change in the patient's condition. The bill specifies that drugs and treatments can only be provided as ordered by a physician, or advanced registered nurse practitioner or physician's assistant who works under the supervision of a physician. Flu and pneumonia vaccines may be administered to patients in accordance with home health agency policy that is developed in consultation with a physician.

The bill amends the definition of "admission" in s. 400.462, F.S., so that the evaluation of the patient does not have to occur when the patient gets home, but can be done while the patient is still at a hospital or rehabilitation facility. In addition, "home health services" is revised to include the provision of durable medical equipment. The bill provides a new definition for "primary home health agency" designating the agency that is responsible for the services provided as well as the plan of care since many home health agencies contract with other agencies for services.

## **Nursing Home Licensure**

### **Litigation Notices**

Since 2001, nursing homes have been required by s. 400.147(10), F.S., to report civil notices of intent to litigate (required by s. 400.0233, F.S.) and civil complaints filed with clerks of courts by a resident or representative of a resident. This information has been used to produce the Semi-Annual Report on Nursing Homes required by s. 400.195, F.S. Information is reported in aggregate for all facilities.

The bill eliminates the requirement to report notices of intent to litigate and civil complaints.

## **Assisted Living Facility Licensure**

Assisted Living Facilities (ALFs) are not currently required to submit resident population data to AHCA. However, there is a requirement to submit disaster/emergency information electronically via AHCA's Emergency Status System (ESS).<sup>3</sup> Submission of ESS data was a result of SB 1986 (Ch. 2009-223 L.O.F), and is being required at the time of licensure renewal. Currently, 42.1 percent (1197) of ALFs are currently enrolled in this system.

Section 429.23, F.S., requires each ALF to submit a monthly report on civil liability claims filed against the facility, and provides that the reports are not discoverable on civil or administrative actions.

## **Pilot Projects**

The Medicaid "Up-or-Out" Quality of Care Contract Management Program in s. 400.148, F.S., was created as a pilot program in 2001 to improve care in poor performing nursing homes and assisted living facilities by assigning trained medical personnel to facilities in select counties similar to Medicare models for managing the medical and supportive-care needs of long-term nursing home residents. The pilot was subject to appropriation; however, an appropriation was not allocated to this program and it was never implemented. According to AHCA, the criteria specified to identify poor performing facilities has been replaced by more comprehensive information for consumers to make informed choices for care.

The bill repeals the Medicaid Up or Out Pilot Quality of Care Contract Management Program.

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<sup>3</sup> The Emergency Status System is a web-based system for reporting and tracking health care facility status before, during and after an emergency.

## Reports

The semi-annual report on nursing homes in s. 400.195, F.S., was provided from December 2002 through June 2005 as a tool to provide information about litigation in Florida nursing homes. The report included demographic and regulatory information about nursing homes in Florida and aggregate numbers of notices of intent to litigate and civil complaints filed with the clerks of courts against Florida nursing homes. The reporting requirement ended June 2005 by law. The statutory obligation to publish this report has been met and by law expired on June 30, 2005.

The Comprehensive Review for Long Term Care Services program report was required to be submitted to the Legislature by July 1, 2005. However, the language requiring the report still exists in s. 409.912(15)(g), F.S.

The bill repeals these two report requirements.

## Dental Workforce

In January of 2008, the State Surgeon General established the Florida Health Practitioner Oral Healthcare Workforce Ad Hoc Committee (Ad Hoc Committee).<sup>4</sup> The mission of the Ad Hoc Committee was to evaluate and address the complex range of oral health workforce concerns that impact Florida's ability to recruit or retain available practicing dental providers (dentists, dental hygienists, and dental assistants), especially for Florida's disadvantaged and underserved populations.<sup>5</sup> The Ad Hoc Committee published the Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (report) in February 2009, which provided recommendations on dental workforce and access to oral health care. The 2009 report the committee suggested "monitoring dental workforce trends through surveys that accompany licensure renewal and assessing dental needs of all persons in Florida through a statewide oral health needs assessment or a statewide oral health surveillance system."<sup>6</sup>

The DOH is conducting a voluntary workforce survey as a part of the current renewal cycle for all Florida licensed dentists and dental hygienists. During the 2010 licensure renewal cycle 10,240 of 11,214 dentists or 91 percent participated in the survey.<sup>7</sup> And 11,026 of 11,710 dental hygienists or 94 percent participated in the survey.<sup>8</sup>

The bill requires that beginning in 2012, at the time of licensure renewal dentist and dental hygienist will be requested to provide information in a dental workforce survey. If the dentist or dental hygienist does not complete the survey within 90 days after renewal, then the Board of Dentistry is required to issue a non-disciplinary citation stating that their license will not be renewed unless the survey is completed. In addition the dentist or dental hygienist must submit a statement that the information they provided in the survey is true and accurate to the best of their knowledge and belief.

The bill provides that DOH:

- Maintain a database to serve as a statewide source of dental workforce data;
- Act as a clearinghouse and coordinator for the collection, and dissemination of dental workforce data;
- Work with stakeholders to assess and share all data collected in a timely fashion;
- Work in conjunction with the Board of Dentistry to develop strategies to maximize federal and state programs that provide incentives for dentists to practice in federally designated shortage areas;
- Work in conjunction with the Board of Dentistry and the advisory body to address matters relating to the state's dental workforce; and

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<sup>4</sup> Florida Department of Health, Health Practitioner Oral healthcare Workforce Ad Hoc Committee Report, February 2009.

<sup>5</sup> *Id.*

<sup>6</sup> Florida Department of Health, Health Practitioner Oral healthcare Workforce Ad Hoc Committee Report (February 2009).

<sup>7</sup> Telephone conversation with the Executive Director for the Florida Board of Dentistry (March 2010).

<sup>8</sup> Email correspondence with the Executive Director for the Florida Board of Dentistry (April 1, 2010).

- Adopt rules to administer the provisions of the bill.

The bill creates an advisory body tasked with providing input on the development of questions for the dental workforce survey. The bill provides that the advisory body be comprised of:

- State Surgeon General or designee;
- Dean of each accredited dental school in the state;
- Representative of the Florida Dental Hygiene Association;
- Representative of the Florida Dental Association;
- Representative from the Board of Dentistry;
- A dentist from each of the dental specialties<sup>9</sup> recognized by the American Dental Association's Commission on Dental Accreditation.

The bill provides that DOH create a dental workforce survey that contains, but is not limited, to the following questions that are codified into statute:

- Questions Related to the Licensee:
  - Name of dental school or dental hygiene program that individual graduated from and the year of graduation;
  - Geographic location of the practice;
  - Anticipated plans of the dentist to change license or practice status;
  - Dentists areas of specialty or certification;
  - Year that the dentist completed specialty program recognized by the American Dental Association;
  - Dentist's membership in professional organizations;
  - Number of pro bono hours provided by the dentist or dental hygienist during the last biennium;
  - Dentists in private practice:
    - Number of full-time dentists and dental hygienists employed by the dentist during the reporting period;
    - Average number of patients treated per week by the dentist during the reporting period;
  - For dental hygienists:
    - Average number of patients treated per week during the reporting period; and
    - Settings where dental care was delivered.
- Questions Concerning the Availability and Trends of Critically Needed Services Provided by the Dentist or Dental Hygienist:
  - Dental care to children having special needs;
  - Geriatric dental care;
  - Dental services in emergency departments;
  - Medicaid services; and
  - Other critically needed specialty areas, as determined by the advisory body.

The bill provides that members of the advisory body are required to serve without compensation. The bill provides legislative intent specifying that DOH implement the provisions of the bill within existing resources.

### **Health Care Clinic Establishment Permit**

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S. DOH is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in

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<sup>9</sup> Currently there are nine recognized specialties: Dental Public Health, Endodontics, Oral and Maxillofacial Surgery, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Orthodontics and Dentofacial Orthopedics, Pediatric Dentistry, Periodontics, and Prosthodontics.

the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics. The regulatory structure provides for prescription drugs to be under the responsibility of a permit at all times, until a prescription drug is dispensed to a patient.<sup>10</sup>

One of the permits issued by DOH under the Act is the Health Care Clinic Establishment (HCCE) permit. The biennial fee for the HCCE permit is \$255<sup>11</sup> and the permit is valid for 2 years, unless suspended or revoked.<sup>12</sup>

The HCCE permit was established in 2008 to enable a business entity to purchase prescription drugs.<sup>13</sup> The HCCE permit is a permit that a medical practice may obtain in order to purchase and own prescription drugs in the business entity's name. The HCCE permit is not required if a practitioner in the clinic or practice wants to purchase and own prescription drugs in his or her own name using his or her professional license that authorizes that practitioner to prescribe prescription drugs.

Under the requirements of the permit, a qualifying practitioner or a veterinarian licensed under ch. 474, F.S., is designated to be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs purchased and possessed by the business entity.<sup>14</sup> Both the qualifying practitioner and the permitted health care clinic must notify the DOH within 10 days after any change in the qualifying practitioner.

The bill exempts licensed dentists who are part of a professional corporation or Limited Liability Company comprised of dentists from having to obtain a health care clinic establishment permit. The bill provides that the dentist is deemed the purchaser and owner of the prescription drugs.

### **Florida Healthy Kids Corporation**

The Florida Healthy Kids Corporation ("Corporation"), under contract with the Agency, performs administrative functions for the overall Florida KidCare program and administers the SCHIP HealthyKids program. The Corporation handles eligibility determination, premium billing and collection, refunds, and customer service for KidCare, except for the large Medicaid component, which is administered by the Agency and the Department of Children and Families.

The corporation is governed by a 12-member board of directors (board) who serve for 3-year terms of office. The current membership includes:<sup>15</sup>

- The Chief Financial Officer, or designee;
- The Secretary of Health Care Administration, or designee;
- One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the Governor, who represents the Children's Medical Services Program;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the Governor, who is an expert on child health policy;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians;
- One member, appointed by the Governor, who represents the state Medicaid program;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties;

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<sup>10</sup> s. 499.01, F.S.

<sup>11</sup> The fee for a HCCE permit may not be less than \$125 or more than \$250 annually. See s. 499.041(2)(c), F.S.

<sup>12</sup> 64F-12.018, F.A.C.

<sup>13</sup> s. 499.01(2)(t), F.S.

<sup>14</sup> s. 499.01(2)(t)1., F.S.

<sup>15</sup> s. 624.91(6), F.S.



- The State Health Officer or designee; and
- The Secretary of Children and Family Services, or designee.

In 2009, the Legislature passed two separate bills that amended the membership to the board.<sup>16</sup> The first bill HB 185, was approved by the Governor on May 20, 2009.<sup>17</sup> This bill added a representative nominated by the Florida Dental Association to the board. The second bill SB 918, was approved by the Governor on June 2, 2009.<sup>18</sup> This bill added the Secretary of Children and Family Services or designee to the board. According to provisions of statutory construction, the law “last passed” by the Legislature is published with a footnote in statute noting the conflict.<sup>19</sup>

The bill adds a representative of the dental community to the Florida Healthy Kids Corporation board of directors. The member will be appointed by the Governor from three candidates nominated by the Florida Dental Association.

## B. SECTION DIRECTORY:

- Section 1.** Repeals paragraph (e) of subsection (10) of s. 112.0455, F.S., relating to disciplinary remedies in the drug-free workplace act.
- Section 2.** Repeals s. 383.325, F.S., relating to inspection reports.
- Section 3.** Repeals s. 395.1046, F.S., relating to complaint investigation procedures.
- Section 4.** Repeals s. 395.3037, F.S., relating to definitions.
- Section 5.** Amends s. 400.0239, F.S., relating to quality of long-term care facility improvement trust fund.
- Section 6.** Repeals subsection (10) of s. 400.147, F.S., relating to required reporting to the internal risk management and quality assurance program.
- Section 7.** Repeals s. 400.148, F.S., relating to the Medicaid “Up-or-Out” Quality of Care Contract Management Program.
- Section 8.** Repeals s. 400.195, F.S., relating to agency reporting requirements for nursing homes.
- Section 9.** Amends s. 400.476, F.S., relating to staffing requirements, notifications, and limitations on staffing services.
- Section 10.** Amends s.400.487, F.S., relating to home health agreements; physician’s, physician assistant’s, and advanced registered nurse practitioner’s treatment orders; patient assessment; establishment and review of plan of care; provision of services; and orders not to resuscitate.
- Section 11.** Repeals subsection (11) of s. 408.802, F.S., relating to applicability of private review agents.
- Section 12.** Repeals paragraphs (e), (f), and (g) of subsection (15) of s. 409.912, F.S., relating to the report on the CARES program and impact of modifying the level of care to eliminate the Intermediate II level of care.
- Section 13.** Repeals subsection (2) of s. 429.12, F.S., relating to requirement for a plan of corrective action pending sale or transfer of ownership of a facility.
- Section 14.** Repeals subsection (5) of s. 429.23, F.S., relating to the reporting requirements of any liability claim.
- Section 15.** Repeals s. 429.911, F.S., relating to adult day care facilities grounds for action when intentional or negligent acts occur that affect the safety and health of a resident.
- Section 16.** Creates an unnumbered section relating to dental workforce survey.
- Section 17.** Creates an unnumbered section relating to dental workforce advisory body.
- Section 18.** Creates an unnumbered section relating to legislative intent.
- Section 19.** Amends s. 499.01, F.S., relating to health care clinic establishment permit.
- Section 20.** Amends s. 624.91, F.S., relating to the Florida Healthy Kids Corporation Act.
- Section 21.** Provides that the bill takes effect July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

<sup>16</sup> See chapters 2009-41 and 2009-113, L.O.F.

<sup>17</sup> ch. 2009-41, L.O.F.

<sup>18</sup> ch. 2009-113, L.O.F.

<sup>19</sup> See preface to the Florida Statutes, “Statutory Construction.”

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to AHCA as of March 31, 2010, 63 percent (1,485) of the 2,361 licensed home health agencies are also Medicare and/or Medicaid certified. Approximately one-third of these agencies are in the process of becoming certified.<sup>20</sup> Certified agencies are already required to meet the new requirements in this bill. Non-certified home health agencies may be impacted if they are not doing the following:<sup>21</sup>

- Supervisory visits for home health aides and certified nursing assistants
- Reviewing plans of care
- Investigating complaints from patients
- Preparing written contracts for individuals not directly employed and other agencies that are providing services under arrangements
- Having a director of nursing or alternate available during operating hours
- Having a registered nurse provide written instructions on patient care to home health aides and certified nursing assistants

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA and DOH have sufficient rule-making authority to implement the provisions of the bill.

<sup>20</sup> Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Statement of House Bill 1503 (March 24, 2010).

<sup>21</sup> *Id.*

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a dental workforce advisory body. However, the bill is silent on the terms of membership terms and how members will be appointed. However s. 20.052(5), F.S., provides that private citizen members must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer and members must be appointed for 4-year staggered terms. Staff recommends adding a statutory cross reference to s. 20.052, F.S., or providing membership terms and appointment provisions into the bill.

On line 629, the bill provides that the Board of Dentistry is required to issue a non-disciplinary citation or renew a license. This is usually a function of the department, not the board. Staff recommends amending the language to provide this authority to the department

According to the proponents for the dental workforce survey, one of the reasons given to staff for supporting the legislation was to provide confidentiality to dentist and dental hygienists who provided information concerning their practice in a survey. However, Committee Substitute for HB 1503, does not provide a public records exemption. House Bill 537, which was amended into House Bill 1503, was tied to House bill 539, which provided a public records exemption for the information contained in dental workforce surveys.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 31, 2010, the Health Care Regulation Policy Committee adopted a strike-all amendment and an amendment to the amendment. The bill was reported favorably as a committee substitute. The amendments:

#### **Amendment 1:** Conforms to SB 2138.

- Retains original bill's repeals of the Medicaid 'Up or Out' program, AHCA reporting and investigative requirements, and various regulatory functions.
- Eliminates all other bill provisions except those related to home health agencies:
  - Creates a patient bill of rights for home health agency clients;
  - Delineates the duties of the director of nursing and any alternates;
  - Delineates the duties of the administrator;
  - Provides detailed requirements for supervision of various services;
  - Specifies service functions and duties of various professionals;
  - Prohibits employment of home health aides without certain scores on competency tests, as set by rule; and
  - Requires various contracts and contract terms.

#### **Amendment to Amendment:**

- Amends the provisions of HB 537, modified, onto the bill.
  - Requires dentists and dental hygienists to complete a dental workforce survey to at the time of licensure renewal;
  - Dentists and hygienists who fail to complete the survey will receive a non-disciplinary citation;
  - Beginning with 2014 licensure renewal cycle, individuals will not be permitted to renew their license if they do not complete the survey;
  - DOH must maintain a database of dental workforce data;
  - Creates an advisory body to provide input in the development of survey questions;
  - Members of the advisory body are required to serve without compensation;
  - DOH must implement the provisions of the bill within existing resources;
  - Exempts dental practices from the health care clinic establishment permit and deems such dentists are the purchaser and owner of prescription drugs (regardless of who pays for the drugs); and
- Adds a member nominated by the Florida Dental Association to the Florida Healthy Kids Corporation Board of Directors.

This analysis is drafted to the committee substitute.